Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Ms. Elizabeth Lara
Legal Assistant
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-2118

Dear Ms. Lara:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101887.

The Texas Department of Insurance (the "department") received a request for the rate filing of the American Security Insurance Company (the "company"). The company asserts that the requested information is excepted from required pubic disclosure based on sections 552.101 and 552.110 of the Government Code. *See* Gov't Code § 552 305 (third party may establish applicability of exceptions to disclosure when its privacy or property rights are implicated), Open Records Decision No. 542 (1990).

Section 552.110 excepts from required public disclosure two categories of information: 1. a "trade secret," and 2. "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." In applying the "commercial or financial information" branch of section 552.110, this office now follows the test for applying the correlative exemption in the Freedom of Information Act, 5 U.S.C. § 552(b)(4). *See* Open Records Decision No. 639 (1996). That test states that commercial or financial information is confidential if disclosure of the information is likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *See National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The company asserts that the release of its rate filings will harm its competitive position.

A business enterprise cannot succeed in a *National Parks & Conservation Ass'n* claim by mere conclusory assertion of a possibility of commercial harm. "To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. Open Records Decision No. 639 (1996) (citing *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert.denied*, 471 U.S. 1137 (1985). We have considered the company's arguments and conclude that it has established that it actually faces competition and that substantial competitive injury would likely result from the disclosure of the requested rate filings. We, therefore, conclude that the department must withhold the rate filings from the requestor based on section 552.110 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 101887

Enclosures: Submitted documents

cc: Ms. Michele Reid
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